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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,630	02/28/2002	Donald J. McMichael	KCX-518C (17507C)	5367
7590 07/23/2004 STEPHEN E. BONDURA, ESQ. DORITY & MANNING, P.A. P.O. BOX 1449 GREENVILLE, SC 29602-1449			EXAMINER BUI, LUAN KIM	
			ART UNIT 3728	PAPER NUMBER

DATE MAILED: 07/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/085,630

Applicant(s)

MCMICHAEL ET AL.

Examiner

Luan K Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5, 7 and 11-21 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6 and 8-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Continued Prosecution Application***

The Request for Continued Examination (RCE) filed on 6/30/2004 under 37 CFR 1.114 based on parent Application No. 10/085,630 is acceptable and a RCE has been established. An action on the RCE follows.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 6 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ross et al. (5,318,543; hereinafter Ross'543) in view of Dutchik (5,590,778) and Fischer (5,289,919). Ross'543 discloses a kit (10) for holding surgical articles comprising a tray (13) having a plurality of planar surfaces (at least two planar surfaces) are offset vertically and at least one recess disposed in the at least one of the planar surfaces, a container (20) containing surgical articles (18, 19) disposed within at least one of the planar surfaces and a cover (12) sealed to at least a portion of the tray. Ross'543 further discloses the container (20) must be removed from the tray prior to access to the articles (17, 27) and other accessory articles such as a sterile drape, swabs, a packet of cotton and so forth could also be placed in the recesses if desired. Ross'543 also discloses the other claimed limitations except for the container comprises a base and a lid that define an interior space such that the container completely surrounds the accessory article. Dutchik teaches a package/kit (10) for holding medical devices comprising a tray (50, 52) having

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a recess adapted to receive a container (14) and a cover (54) sealed to at least a portion of the tray. The container having a base (16) for holding medical devices and a lid (36) for closing the container (Figure 3). Fischer shows a kit (10) comprising a tray (15) having a plurality of recesses (34) adapted to receive a plurality of containers (38) and each container having a base and a lid. It would have been obvious to one having ordinary skill in the art in view of Dutchik and Fischer to modify the container of Ross'543 so the container comprises a base and a lid that completely surrounds the articles for better protecting the articles and to facilitate opening and closing the container. It would have been obvious to one having ordinary skill in the art in view of Ross'543 as modified to modify the container so the interior space is used to hold at least one accessory article because the selection of the specific articles for the container would have been an obvious matter of design choice inasmuch as the resultant structures will work equally well.

***Allowable Subject Matter***

3. Claims 5, 7 and 11-21 are allowed.

***Response to Arguments***

Applicant's arguments with respect to all rejected claims have been considered but are deemed to be moot in view of the new grounds of rejection.

The claims appear to have merely combined a number of desirable prior art features each doing in the combination that for which it was already well known in the prior art.


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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (703) 305-5861. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to TC 3700 Customer Service at (703) 306-5648.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 872-9301. Facsimile correspondence for this application should be sent to (703) 872-9306 for Formal papers and After Final communications.

lkb  
July 22, 2004

  
Luan K. Bui  
Primary Examiner